

Forestry Plantations Queensland Bill 2006

Explanatory Notes

The Forestry Plantations Queensland Bill has been drafted to be consistent with current legislative practice and in modern language. As a consequence, particular sections and clauses require little or no specific explanation and in these Explanatory Notes, those parts may be repeated or summarised in general terms only.

General Outline

Policy Objectives

Both the State-owned plantations and the associated processing sector operate in a highly competitive market, and each is facing significant challenges to improve productivity, reduce cost structures, undertake commercial investments needed to ensure market efficiencies are achieved and/or maintained and manage ongoing structural reform pressures in order to remain competitive.

This Bill provides the commercial reforms needed by the plantation manager to respond to the significant market challenges facing the plantation industries, to realise the full commercial value of its assets and to continue to underpin a competitive processing sector in the State.

The Bill also includes proposed amendments to the *Parliament of Queensland Act 2001*, which give effect to changes to salary sacrifice arrangements for Members of Parliament and clarify salary entitlements of Members holding certain offices.

Reasons for the Bill

Legislation is required to establish the statutory position of Chief Plantation Forestry Officer, to create the Corporation Sole and confer the property rights onto the Corporation Sole, which are needed to achieve the policy objectives. Amendment to the *Parliament of Queensland Act 2001* is required to give effect to certain changes to salary sacrifice arrangements for Members of Parliament and clarify salary entitlements of Members holding certain offices.

Achievement of the Objectives

In order to achieve the policy objectives, this Bill creates the appropriate structure and governance arrangements for the commercial management of the State-owned plantation assets, by:

- Clarifying property rights for the plantation manager, conferring certain State-owned plantation related assets on the plantation manager and providing the plantation manager with the rights to deal with natural resource products from State-owned plantations established on State Forest (a *Forestry Act 1959* Reserve);
- Enhancing the commercial capacity and capability of the plantation manager; and
- providing an appropriate accountability and governance framework for the commercial manager with a reporting framework to two responsible Ministers, the Treasurer and the Minister for Primary Industries and Fisheries.

Following an evaluation of a range of structural reform options for the State-owned plantation manager, it was determined that, if properly designed and established, a Corporation Sole structure supported by a public service office (pursuant to the *Public Service Act 1996*) would best provide the plantation manager with the reforms needed to underpin the ongoing value of the plantation asset and to support a sustainable competitive processing industry.

The Bill also amends the *Parliament of Queensland Act 2001* to provide new salary sacrifice arrangements for Members of the Legislative Assembly and to clarify that Members are only entitled to one additional salary irrespective of the number of positions they may hold.

Alternatives to the Bill

The structural alternatives for achieving the policy objectives are formation of a Corporation Sole pursuant to this Bill and creation of a Government Owned Corporation pursuant to the *Government Owned Corporations Act 1993*. The Corporation Sole structure pursuant to this Bill is preferred as it allows for the natural resource products arising from State Plantation Forests to be managed in accordance with the *Forestry Act 1959* and for the State Forest tenure to continue, thus enabling Section 24JA of the *Native Title Act 1993* to be preserved (ensuring that any future acts done by the Corporation Sole can be validated by that provision).

There is no alternative to enactment of amendment to the *Parliament of Queensland Act 2001* to give effect to the desired changes to salary sacrifice arrangements for Members of Parliament and to clarify salary entitlements of Members holding certain offices.

Estimated Cost for Government Implementation

The Chief Plantation Officer may be filled by a public servant. Should this occur, the estimated additional costs of implementing the Bill will be minor and be confined to the costs of setting up, funding and administering a Board.

Amendments to the *Parliament of Queensland Act 2001* are expected to be cost neutral.

Consistency with Fundamental Legislative Principles

Six clauses in the Bill may be regarded by the Scrutiny of Legislation Committee as an inappropriate delegation of legislative power (otherwise known as a Henry VIII clause).

Clause 13(r) provides that the definition of what constitutes a financial arrangement for the purposes of the proposed *Forestry Plantations Queensland Act 2006* may be added to by regulation and Clause 16(4) contains a similar provision in respect of borrowing. Clause 25(1)(j) allows the responsible Ministers to require another matter relevant to FPQ's functions to be included in FPQ's operational plan. Clause 41(c) provides for the conferring of further functions on the FPQ Advisory board by regulation. Clause 64 provides for a transitional regulation-making power (subject to a one year sunset clause). A parallel transitional regulation-making power (also subject to a one year sunset clause) is to be inserted into the *Forestry Act 1959*. Given the complexity of the *Forestry Act 1959*, these two regulation making powers are considered necessary to address issues that may arise under that Act in regard to transferring administrative responsibility for State Plantation Forests to FPQ.

It is not possible to provide exhaustive definitions or lists in respect of the above subject matters. For example, the types of financial or borrowing arrangements that FPQ may desire to enter into (with the approval of responsible Ministers), or the functions that the board may be required to undertake may change over time in line with market development. These in turn may warrant the responsible Ministers requiring more stringent reporting from FPQ or the capacity to respond rapidly to emergent issues.

It is important to provide for sufficient flexibility in the future operations of FPQ. The proposed delegations of legislative power provide this flexibility, in a way that does not have far-reaching consequences. The scope of the regulation-making powers is limited by the context for which they are provided.

Consultation

Consultation in relation to the draft Bill was carried out with key stakeholders who comprised the following:

- Queensland State Government
 - Treasury Department
 - Department of the Premier and Cabinet
 - Office of the Parliamentary Counsel
 - Department of Primary Industries and Fisheries.
 - Environmental Protection Agency
 - Department of Natural Resources, Mines and Water
 - DPI Forestry
 - QSuper
- Trade Unions
- Timber Industry Participants

Notes on Provisions

Part 1 Preliminary

Clause 1 States the short title of the Act.

Clause 2 Provides for the commencement of the Act, other than Part 6, on a day to be fixed by proclamation.

Clause 3 Provides the location of the dictionary which defines particular words used in the Act.

Clause 4 Provides that a regulation may declare an area of State Forest land, presently used for plantation purposes, to be State plantation forest; makes provision if the land stops being a State Forest; and declares that declaration of land as a State plantation forest does not affect the status of the land as State Forest.

Clause 5 This clause requires that the responsible Ministers act jointly in relation to FPQ, unless the offices of both responsible Ministers are held by the same person.

Part 2 Forestry Plantations Queensland

Division 1 Establishment and Capacity of FPQ

Clause 6 Establishes Forestry Plantations Queensland (FPQ) as a Corporation Sole constituted by the Chief Plantation Officer; and provides that the corporation has perpetual succession and a seal and may sue and be sued in its corporate name.

Clause 7 Provides that FPQ represents the State and has all the privileges and immunities of the State.

Clause 8 Confers all the legal powers of an individual upon FPQ, subject to the other provisions in the Bill.

Clause 9 Limits the exercise of FPQ's powers in relation to State plantation forests.

Clause 10 Provides that FPQ is an excluded matter for the purposes of the Corporations legislation.

Clause 11 Regulates the use of the seal of FPQ.

Division 2 Functions of FPQ

Clause 12 Lists the functions and obligations of FPQ; and provides that FPQ must perform its functions in a way that is consistent with the principles of sustainable management of plantation forests, directions given to it by responsible Ministers and FPQ's strategic plan and operational plan.

Division 3 Financial Matters

Subdivision 1 Interpretation

Clause 13 This clause defines a broad range of financial arrangements and transactions.

Subdivision 2 Application of Financial Administration and Audit Act 1977

Clause 14 This clause provides that FPQ is a Statutory Body for the purposes of the *Financial Administration and Audit Act 1997*, and is subject to that Act.

Subdivision 3 FPQ's financial powers

Clause 15 Allows FPQ to operate a bank account with a financial institution. The use of an overdraft facility requires the approval of the responsible Ministers.

Clause 16 Allows FPQ to borrow by permission of the Responsible Ministers but exempts from that requirement the use of commercial hire purchase, operating lease or credit card arrangements; and provides that a regulation may declare that something is, or is not, a form of financial accommodation for the definition 'borrow'.

Clause 17 Provides that FPQ may invest with the approval of the responsible Ministers. However, this requirement does not apply if the proposed investment has been stated in FPQ's operational plan.

Clause 18 Allows FPQ to provide a guarantee only with the approval of the responsible Ministers

Clause 19 Allows FPQ to enter into a derivative transaction only with the approval of the responsible Ministers.

Clause 20 Allows FPQ to enter into other financial arrangements not already covered elsewhere in the Bill only with the approval of the responsible Ministers. However, this requirement does not apply if the

proposed financial arrangement has been stated in FPQ's operational plan or is related to a proposed activity, proposed investment or community service obligation stated in FPQ's operational plan.

Clause 21 Provides that FPQ may form or participate in the formation of a company, or become a parent entity in relation to a company, with the approval of the responsible Ministers.

Subdivision 4 Dividends

Clause 22 Requires FPQ to pay a dividend to the State for each financial year and defines the process and criteria for paying that dividend.

Division 4 Operational Plan

Clause 23 Outlines the purpose of the division in relation to the operational plan. The provisions of Division 4 apply in addition to the requirements for the operational plan under the *Financial Administration and Audit Act 1997*. If there is an inconsistency with Division 4 and the *Financial Administration and Audit Act 1997*, a requirement under this division prevails to the extent of the inconsistency.

Clause 24 Requires FPQ to comply with its operational plan for a financial year.

Clause 25 Specifies the required contents of the operational plan.

Clause 26 Requires that FPQ must prepare, and give to responsible Ministers, a draft operational plan; and specifies the timing for FPQ to prepare the draft operational plan.

Clause 27

Allows the responsible Ministers to accept an operational plan or request FPQ to make changes to an operational plan; and requires FPQ to comply with any such request.

Clause 28 Provides that an operational plan has effect once approved by the responsible Ministers, and provides for the continuing application of the previous operational plan until the new operational plan has been accepted by the responsible Ministers.

Clause 29 Requires FPQ and the responsible Ministers to execute the operational plan once agreed to by the responsible Ministers.

Clause 30 Allows the responsible Ministers to amend the operational plan at any time by written notice.

Division 5 Reporting

Clause 31 Requires FPQ to report to the responsible Ministers six weeks (or other period if that period is agreed between FPQ and responsible Ministers) after the end of a quarter on its operations during that quarter and provides that a quarterly report must contain the information required to be given in the report under FPQ's operational plan.

Division 6 Directions and Delegations

Clause 32 Allows the Responsible Ministers to give written directions to FPQ about a matter relevant to the performance of FPQ's functions, and requires FPQ to comply with those directions and disclose those directions and FPQ's response in its annual report.

Clause 33 Allows FPQ to delegate powers and functions to an advisory board, including a member of a board, except for the power to approve remuneration of board committee members

Division 7 Work Performance Arrangements

Clause 34 Allows FPQ to enter into a work performance agreement by contractual arrangement with the chief executive of a department or the appropriate authority of another government entity, such as the head of a public service office. This is a parallel provision to S82 of the *Public Service Act 1996* regarding work performance and interchange arrangements.

Division 8 Other Matters

Clause 35 This clause provides for the payment of compensation to FPQ for the reasonable value of natural resource products lost if land that is State Plantation Forest ceases to be State Forest.

Clause 36 Provides that FPQ must enter into an agreement with the State, providing for access rights over State land and State Plantation Forests for the purpose of carrying out legislative functions and exercising legislative powers. This clause recognises that State Forest Plantations may occur within, or adjacent to, other Crown land and reserves, which are managed by other State agencies; that FPQ and these agencies will need to cooperate on a range of matters (for example fire control); that agencies may need to access and traverse through lands administered by FPQ; that FPQ may need to access and traverse through lands administered by these agencies; and that agreement is needed in relation to these matters.

Clause 37 Provides that FPQ is a unit of public administration for the purposes of the *Crime and Misconduct Act 2001*

Clause 38 Provides that the *Ombudsman Act 2001* does not apply to the making of a recommendation by FPQ to responsible Ministers or to a decision by FPQ about its commercial policy or commercially competitive activities.

Clause 39 Provides that FPQ has no property in minerals or petroleum below or on the surface of a State plantation forest.

Part 3 Forestry Plantations Queensland Advisory Board

Division 1 Establishment and Functions

Clause 40 Establishes the FPQ advisory board.

Clause 41 Details the functions of the board as being to advise FPQ about matters relevant to the performance of FPQ's functions, to exercise powers delegated by FPQ or to undertake other functions prescribed under a regulation.

Division 2 Board Membership

Clause 42 Limits the number of board members to five, to be appointed by the responsible Ministers. The board appointments model adopted follows the model used in the *Agricultural College Act 2005* where the board members are appointed by the responsible Minister. Following changes to the Queensland Constitution, Queensland legislation no longer has to require significant appointments to be made by Governor in Council.

Clause 43 Limits membership of the board to people who are not public service employees.

Clause 44 Requires the responsible Ministers to appoint a board chairperson; provides that the responsible Ministers may appoint another member to be the deputy chairperson of the board; and makes provision for the term of office and when a vacancy occurs and; provides that a person removed from, or resigning from, the office of chairperson or deputy chairperson may continue to be a board member.

Clause 45 Limits the term of membership for board members to three years.

Clause 46 Provides mechanisms for resignation of board members.

Clause 47 Provides that board members are entitled to be paid the remuneration decided by responsible Ministers and that the board members hold office on conditions stated in this Act and on other conditions decided by responsible Ministers.

Division 3 Board Meetings

Clause 48 Provides that the board may conduct its business as it considers appropriate.

Clause 49 Allows the board to determine the times and places of board meetings.

Clause 50 Provides rules for determining who will preside at board meetings.

Clause 51 This clause sets the quorum at three for board meetings.

Clause 52 Allows the board to hold meetings using communications technology.

Clause 53 Provides that the board must keep minutes of its meetings.

Clause 54 This clause sets out the procedures to be followed if a board member has an interest in an issue being considered by the board, which could conflict with the proper performance of the board member's duties.

Division 4 Other Provisions

Clause 55 Provides that the board may, with the approval of FPQ, establish committees to help it perform its functions, that committees need not consist only of board members and that appointments to a committee must be made by the board in writing.

Part 4 Chief Plantation Forestry Officer

Clause 56 This clause establishes the position of Chief Plantation Forestry Officer, appointed by the Governor in Council. The Chief Plantation Forestry Officer is constituted as the Corporation Sole to be known as Forestry Plantations Queensland (FPQ).

Clause 57 This clause confers functions given under this or another act to the Chief Plantation Forestry Officer.

Part 5 Transitional Provisions

Clause 58 Provides definitions to be used for Part 5.

Clause 59 This clause defines relevant State assets and liabilities as those stated in a register and approved by the responsible Ministers.

Clause 60 Provides for the relevant State assets and liabilities to be transferred to FPQ upon its commencement. Provides that various contracts, agreements, arrangements and deeds, relating to the relevant assets and liabilities to which the State is a party in force immediately before the commencement are taken to have been entered into by FPQ and may be enforced against and by FPQ. Provides that any property relating to the relevant assets and liabilities that, immediately before the commencement, was held on trust, or subject to a condition, by the State

continues to be held on the same trust, or subject to the same condition, by FPQ. Provides that a lease relating to the relevant assets and liabilities granted by, or to, the State, in force immediately before the commencement, is taken to have been granted by, or to, FPQ. Provides that proceedings by or against the State, or that could have been started by or against the State before the commencement, relating to the relevant assets or liabilities may be continued or started by or against FPQ. Provides that the registrar of titles or other person responsible for keeping a register for dealings in property must, if asked by FPQ, record the vesting of the property under this section in FPQ. For the purpose of the National Tax Equivalent Regime, the transfer is to effect a Government imposed restructure.

Clause 61 Provides that a relevant proceeding that could have been started by or against the State before commencement may be started by or against FPQ.

Clause 62 Provides transitional arrangements in regard to FPQ's strategic plan.

Clause 63 Provides transitional arrangements in regard to FPQ's operational plan

Clause 64 Provides a transitional regulation making power about a matter necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Forestry Act 1959* as in force immediately before the commencement to the operation of this Act and the *Forestry Act 1959* as amended by this Act; and about a matter this Act does not make provision or sufficient provision. Provides that a transitional regulation must declare it is a transitional regulation, which will expire one year after the commencement.

Part 6 Amendment of Parliament of Queensland Act 2001

Clause 65

States that this part amends the *Parliament of Queensland Act 2001*.

Clause 66

Amends the *Parliament of Queensland Act 2001* to make provision for the additional salary entitlements of Members of Parliament who hold certain

offices, including office holders in the Legislative Assembly, Ministers and Parliamentary Secretaries.

Section 114 of the Act currently outlines three specific examples of a Member holding two positions for which only one additional salary is payable. By not referring to all potential examples where a Member might hold two positions, the possibility of an entitlement to more than one additional salary is not specifically ruled out.

Clause 66 inserts an amendment to section 114 of the Act - '*Only 1 additional salary is payable*' to clarify that the intention of section 114 is that Members are only entitled to one additional salary irrespective of the number of positions they may hold at any given time.

Clause 67 Inserts a new Chapter 7, part 4 into the *Parliament of Queensland Act 2001*, and provides that:

- this section applies to a member if the *Parliamentary Contributory Superannuation Act 1970* does not apply to the member.
- A member may, by written notice given to the Clerk, elect that the annual salary and any additional salary of the member—
 - (a) be provided —
 - (i) in part by the payment of salary to the member; and
 - (ii) in part by the payment of superannuation contributions to the State Public Sector Superannuation Fund for the member;
 or
 - (b) be provided entirely by the payment of superannuation contributions to the State Public Sector Superannuation Fund for the member.
- Despite part or all of the annual salary or any additional salary of the member being paid to the State Public Sector Superannuation Fund under the election, the member is taken to have received the annual salary and any additional salary the member is entitled to.

A member may vary or revoke an election made under section 123B by written notice given to the Clerk.'

Part 7 Amendment of Other Acts

Clause 68 States that Schedule 1 amends the *Biodiversity Act 2004*, the *Forestry Act 1959* and the *Statutory Bodies Financial Arrangements Act 1982*.

Biodiversity Act 2004

Amends the *Biodiversity Act 2004* to provide that the Chief Executive for the purposes of that Act may approve an application relating to a State Plantation Forest with the approval of the Chief Plantation Officer.

Forestry Act 1959

Provides necessary amendment to the *Forestry Act 1959* to:

enable FPQ to exercise certain powers of that Act as they relate to State Plantation Forests;

define relevant natural resource products;

- enable State to enter into a *profit-e-prendre* arrangement with FPQ to enable FPQ to deal with natural resource products on State Plantation Forests;
- make certain transitional arrangements in relation to permits, licences or other relevant authority granted under that Act; and
- provide for a transitional regulation making power about a matter necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force immediately before the commencement of this section to the operation of this Act as amended by the *Forestry Plantations Queensland Act 2006*; and for a matter this Act does not make provision or sufficient provision.
- Provides that such a transitional regulation must declare it is a transitional regulation, which will expire 1 year after commencement of the section.

The amendments also provide that certain powers of the *Forestry Act 1959* will be exercised a public service office (established pursuant to the *Public Service Act 1996*), to be known as *Forestry Plantations Queensland Office*.

Statutory Bodies Financial Arrangements Act 1982

Provides that FPQ is not a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*.

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